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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,897

10/17/2003

Antonella Pesce

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9804

27752 7590 08/31/2010  
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EXAMINER

BETTON, TIMOTHY E

ART UNIT

PAPER NUMBER

1627

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/687,897	<b>Applicant(s)</b> PESCE ET AL.	
	<b>Examiner</b> TIMOTHY E. BETTON	<b>Art Unit</b> 1627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-19 is/are pending in the application.
- 4a) Of the above claim(s) 1,3,4,6,9,10,13,15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,5,11,12,14 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 August 2010 has been entered.

### ***Response to Arguments***

Applicants' Remarks filed on 16 August 2010 have been acknowledged and duly made of record.

Applicants' assert that that [t]he Final Office Action has failed to establish a *prima facie* case supporting the rejection of claims 2, 5, 8, 11, 12, 14, and 17-19 under 35 USC §103(a) over Morris et al. and Roe in View of Grub et al.

Applicants' arguments are considered but are not found persuasive in that, firstly, applicants' arguments are based upon amendments to claims as recently filed on 16 August 2010. Secondly, applicants' arguments are considered but are not found persuasive due to the fact that applicants' amendment, "*consisting essentially of*" in claim 2 at line 10 is no more distinguishing than the comprising language because they are both drawn to a closed range of about 0.1% to about 99.9%. In other words, regardless of whether the closed range '*consists of*' or '*comprises*' 0.1% to about 99.9%, the limitation is still adequately overcome by the reference(s) of record.

Further, applicants purport that the claimed invention will consist of one emollient *that is* triethylcitrate.

Again, applicants' arguments are considered but are not found persuasive in that, firstly, applicants' arguments are based upon amendments to claims as recently filed on 16 August 2010.

Secondly, applicants' arguments are considered but are not found persuasive due to an explicit explanation regarding triethylcitrate on page 5 in the second paragraph. This Examiner specifically directs applicants' attention same page 5 at line 1 line 2 where Roe specifically cites a plastic emollient. The one of skill would reasonably expect this plastic emollient to be interchangeable with the plasticizer triethylcitrate of said Roe. The plasticizer triethylcitrate is already well-established in this instance as a plasticizer to lend added pliability and flexibility which is an essential characteristic for the function and therapeutic effect a sanitary napkin. Thus, the plasticizer triethylcitrate is well-established as an essential if not sole component drawn to the flexibility of the sanitary napkin.

Further, applicants' purport that Roe teaches away from triethylcitrate but the mere indication that Roe allegedly 'teaches away' according to applicants still does nothing to preclude the fact that Roe adequately addresses the essential elements of the invention. It would have still been obvious to try based upon the prevalence of the use of triethylcitrate in sanitary napkins.

Further still, applicants attention is directed to page 14 of 15 of the current set of remarks as filed 16 August 2010 disclose the following:

“Applicants do not use triethyl citrate, an emollient, with an immobilizing agent. Applicants place triethyl citrate in combination with menthone glycerol ketal on the topsheet without an immobilizing agent resulting in a prolonged freshness sensation to the wearer. (Specification, page 7, lines 26 to 28). Further, the use of triethyl citrate as an emollient contributes to the physical and chemical stability of the cooling agent during storage and use of the articles. (Page 5, lines 5 to 6). “

The portion drawn to plac[ing] triethyl citrate in combination with menthone glycerol ketal on the topsheet without an immobilizing agent is nowhere supported in the 53 pages of the current specification. The limitation drawn to an article without an immobilizing agent for triethylcitrate is nowhere taught to the extent to distinguish this limitation as having some unexpected results in as far as extended freshness is desired. Page 7 at lines 26 to 28 in the specification are merely drawn to the cooling effect or sensation and not to any limitation drawn to topsheet without an immobilizing agent.

Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

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***Status of the Claims***

Claims 2, 5, 11, 12, 14, and 17-19 are pending prosecution on the merits. Claims 1, 3-4, 6, 9-10, 13, and 15-16 are withdrawn from further consideration. Claims 7 and 8 are cancelled.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2, 5, 11, 12, 14, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris et al. (USPN 5514122) and Roe (USPN 5609587) in view of Grub et al. (USPN 5266592).

Morris et al. teach feminine hygiene pad (Always Ultra) in column 14 line 48. Applicants' Example 3 in the specification disclose the similar feminine hygiene pad which reasonably meets the limitations attributed to said article in claim 2. Specifically, Morris's "Always Ultra" is the same article claimed with the exception of the limitation drawn to menthone glycerol ketal and triethyl citrate.

Thus, Morris et al. teach all the specific limitations drawn to the configuration of the said article because of the explicit disclosure in Example 3 of the specification. In the alternative, it would have been well within the purview of the skilled artisan to optimize the characterization of hygiene pads that may be readily reproducible and manufactured. The apertured polymeric filmed backsheet, the topsheet, the suitability to be worn in contact with at least a portion of the skin and/or mucosal surface of the mammal body. The one of skill would readily recognize that this is achieved as a sanitary napkin to the one in need thereof.

However, Morris et al. does not teach the modification of the Always Ultra pad in that the said article of Morris et al. is not sprayed or powdered with a delivery system containing an emollient comprising **the plasticizer triethylcitrate or the cooling agent, menthone glycerol ketal.**

Roe teaches an *absorbent article* containing a liquid pervious *topsheet* coated with a *lotion* composition is disclosed. The lotion composition comprises a ***plastic or fluid emollient*** such as mineral oil or petrolatum, an immobilizing agent such as a fatty alcohol or paraffin wax to immobilize the *emollient* on the surface of the *topsheet*, and optionally a hydrophilic surfactant to improve wettability of the coated *topsheet*. Because the *emollient* is substantially immobilized on the surface of the *topsheet*, less *lotion* is required to impart the desired therapeutic or protective *lotion* coating benefits (abstract only). Roe teaches in column 1 at lines 24-26 containing a topsheet, an absorbent core, and a fluid-impermeable backsheet material. Further, Roe asserts in lines 26-28 that these types of absorbent structures (emphasis) may be highly efficient for the absorption of fluids (this reasonably extends to menstrual fluids *inter alia*).

**Applicants' attention is directed to the portion *supra* disclosing a plastic or fluid emollient. This limitation is made fully obvious in view of the limitation in the claim of an emollient comprising triethylcitrate which is art-known as a plasticizer component/emollient which keeps the fabric upon which it is applied pliable and flexible.** The low range of the disclosed percent weight of the emollient is further made fully obvious by the teachings and methods of Roe.

Roe et al. teach 5 to about 90% of an agent capable of immobilizing said emollient on said outer surface of topsheet. Further, Roe et al. describes the benefits of an emollient as disclosed in current invention to be administered to the topsheet in column 3 lines 29-39. Roe does not teach the cooling agent, menthone glycerol ketal. The limitations of claim 5 drawn to



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0.001 gm/2 to about 300 gm/2 to a cooling agent are made fully obvious via the teaching of Grub et al. which suggests this particular range as a standard starting point for treatment in order to establish the cooling effect. Please see column 4, lines 25-32. However, the motivation to combine the said cooling agent in a sanitary napkin and/or derivative thereof is taught in Grub et al. In column 4 lines 14-16, the compositions as taught by Grub et al. can be used for *all purposes where a physiological cooling effect is desired*. Specifically, lines 20 and 21 disclose pharmaceutical preparations and body care products which may reasonably extend to the articles of the claimed current invention. Thus, the motivation to combine Grub et al. with the other two references supra is based upon the desirability of a compound such as menthone glycerol ketal to be employed in order to sanitize and deodorize.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY E. BETTON whose telephone number is (571)272-9922. The examiner can normally be reached on Monday-Friday 8:30a - 5:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TEB

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1627